

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

William A. Dailey

(b) County of Residence of First Listed Plaintiff Northampton
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John S. Harrison, Esq., Broughal & DeVito, L.L.P.
38 W. Market St., Bethlehem, PA 18018; (610) 865-3664

DEFENDANTS

Lafayette College

County of Residence of First Listed Defendant Northampton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Unknown.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Sections 621 et seq.

Brief description of cause:
Age discrimination in violation of ADEA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMANDS In excess of \$150,000
 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/11/2011

SIGNATURE OF ATTORNEY OF RECORD

John S. Harrison, Esquire

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 783 American General Drive, Easton, PA 18040

Address of Defendant: 12 Markle Hall, Easton, PA 18042

Place of Accident, Incident or Transaction: 12 Markle Hall, Easton, PA 18042
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☐ Unknown ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, John S. Harrison, Esq., counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 2/11/11

[Signature]
Attorney-at-Law

53864

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/11/11

[Signature]
Attorney-at-Law

53864

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM A. DAILEY,

Plaintiff

v.

LAFAYETTE COLLEGE,

Defendant

:
:
:
:
:
:
:
:
:

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT AND JURY TRIAL DEMAND

Plaintiff William A. Dailey (hereinafter, "Mr. Dailey"), by and through his undersigned counsel, Broughal & DeVito, L.L.P., files the instant Complaint against Defendant Lafayette College (hereinafter, "Lafayette"), averring as follows:

Nature of Action

1. This is an action for age discrimination and age-based harassment.

Parties

2. Mr. Dailey was born on June 7, 1958 and is presently 52 years old.
3. Lafayette College is a non-profit corporation organized pursuant to the laws of the Commonwealth of Pennsylvania and having an address situated at 12 Markle Hall, Easton, Pennsylvania 18042.
4. Lafayette College employs more than 1,000 employees.

Procedural Prerequisites

5. Mr. Dailey was terminated from his employment with Lafayette College on April 30, 2008.

6. On or about November 10, 2008, Mr. Dailey filed a written Charge of Discrimination and supporting Affidavit with the EEOC.

7. More than sixty (60) days have passed since Mr. Dailey filed his claim with the EEOC.

8. On or about November 15, 2010, the EEOC issued a Right to Sue letter to Mr. Dailey.

Facts

9. Mr. Dailey began working as a Network Engineer for Lafayette College in August 1998.

10. During Mr. Dailey's career at Lafayette College, he received a promotion to the position of Group Leader - Network Engineer.

11. In his role as Group Leader, Mr. Dailey was responsible for the network portion of Lafayette College's Information Technology Services and had two Network Engineers reporting to him.

11. In or around January 2004, Lafayette College hired John O'Keefe, an individual under the age of 30, to a managerial position over Mr. Dailey.

12. In or about 2006, Lafayette College initiated the process of designing and building a new network that would, in relevant part, operate using Cisco software.

13. At the time of its implementation, Lafayette College, by and through John O'Keefe and Neil McElroy, the Dean of Libraries and Information Technology, assured Mr. Dailey that he would have an opportunity to obtain training for the new network.

14. Rather than insuring that Mr. Dailey received such training, Lafayette College, by and through John O'Keefe and Neil McElroy, began a practice and pattern of discriminating against and harassing Mr. Dailey, as well as other employees over the age of 40.

15. As part of the aforesaid practice and pattern of harassment and discrimination, Lafayette College, by and through John O'Keefe and Neil McElroy, replaced older employees with substantially younger employees.

16. As part of the aforesaid practice and pattern of harassment and discrimination, Lafayette College, by and through John O'Keefe and Neil McElroy, repeatedly and publicly humiliated Mr. Dailey by suggesting that he was too old to comprehend and/or operate the new network.

17. Examples of the age-based harassment, humiliation and discrimination to which Mr. Dailey was subjected include the following:

- a. Despite its assurances to the contrary, Lafayette College, by and through John O'Keefe and Neil McElroy, refused to establish a training curriculum—including training requirements, mandatory classes, suggested classes, guidelines, goals and/or milestones—for Mr. Dailey to follow;
- b. Lafayette College, by and through John O'Keefe and Neil McElroy, specifically insured that its significantly younger employees had access to and were able to attend training sessions that would enable them to comprehend and/or operate the new network;

- c. Lafayette College, by and through John O'Keefe and Neil McElroy, specifically excluded Mr. Dailey from those training sessions provided to its significantly younger employees;
- d. Lafayette College, by and through John O'Keefe and Neil McElroy, refused to acknowledge that Mr. Dailey successfully learned and implemented the information he obtained at those training sessions he was able to attend;
- e. Lafayette College, by and through John O'Keefe and Neil McElroy, persisted in suggesting that Mr. Dailey was too old to comprehend and/or operate the new system; and
- f. Despite assuring Mr. Dailey he would have an opportunity to learn the new system, Lafayette College, by and through John O'Keefe and Neil McElroy, immediately and unjustifiably began to criticize his performance although it had been exemplary at all times material hereto.

18. On February 14, 2008, Lafayette College informed Mr. Dailey that his employment was terminated effective April 30, 2008.

19. On February 14, 2008, Lafayette College instructed Mr. Dailey that he was to work from his home until April 30, 2008.

20. It is reasonably believed and, therefore, averred that Lafayette College exclusively interviewed individuals under the age of 40 to replace Mr. Dailey.

21. Mr. Dailey was replaced by Michael Costello, an individual approximately 20 years younger than he.

COUNT I
(AGE DISCRIMINATION IN VIOLATION OF ADEA)

22. Mr. Dailey incorporates by reference herein the allegations contained in Paragraphs Nos. 1 through 21, *supra*, as though fully set forth at length hereinafter.

23. Mr. Dailey is over 40 years old.

24. Mr. Dailey was qualified for his position.

25. As more fully set forth, *supra*, Lafayette College discriminated against Mr. Dailey with respect to the terms and conditions of his employment because of his age.

26. As more fully set forth, *supra*, Lafayette College replaced Mr. Dailey with a significantly younger employee.

27. Lafayette College willfully discriminated against Mr. Dailey in violation of the Age Discrimination in Employment Act.

WHEREFORE, Mr. Dailey respectfully requests this Honorable Court enter judgment in his favor and against Lafayette College by awarding him relief including, but not limited to, the following:

- a. Back pay, front pay and all lost benefits, as well as other compensation;
- b. Reinstatement and upgrading;
- c. Liquidated damages;
- d. Prejudgment interest;
- e. Attorney fees and costs;
- f. A declaration that Lafayette College's conduct violated the Age Discrimination in Employment Act; and
- g. Any such other relief as this Honorable Court deems fitting.

COUNT II
(AGE-BASED HARASSMENT IN VIOLATION OF ADEA)

28. Mr. Dailey incorporates by reference herein the allegations contained in Paragraphs Nos. 1 through 27, *supra*, as though fully set forth at length hereinafter.

29. Lafayette College harassed Mr. Dailey because of his age.

30. The harassment was sufficient, severe and pervasive enough to alter the conditions of employment and create an abusive working environment for Mr. Dailey.

31. The harassment engaged in by Lafayette College was carried out by Mr. Dailey's superiors.

32. Submission to the age-based harassment was implicitly made a term of Mr. Dailey's employment.

33. The harassment affected Mr. Dailey to his detriment.

34. The harassment would detrimentally affect any reasonable person in the same situation as Mr. Dailey.

WHEREFORE, Mr. Dailey respectfully requests this Honorable Court enter judgment in his favor and against Lafayette College by awarding him relief including, but not limited to, the following:

- a. Back pay, front pay and all lost benefits, as well as other compensation;
- b. Reinstatement and upgrading;
- c. Liquidated damages;
- d. Prejudgment interest;

- e. Attorney fees and costs;
- f. A declaration that Lafayette College's conduct violated the Age Discrimination in Employment Act; and
- g. Any such other relief as this Honorable Court deems fitting.

JURY TRIAL DEMAND

35. Mr. Dailey requests trial by jury in the instant litigation.

BROUGHAL & DeVITO, L.L.P.

Date: February 11, 2011

By: _____

JOHN S. HARRISON, ESQ.

Attorney ID No. 53864

Attorney for Plaintiff William A. Dailey

38 West Market Street

Bethlehem, PA 18018

Telephone No. (610) 865-3664

Facsimile No. (610) 865-0969